

Charges for freight are gross receipts subject to ROT when they are part of the selling price of the tangible personal property being sold. See, 86 Ill. Adm. Code 130.415. (This is a GIL).

October 22, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 10, 2002 that we received on July 23, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Enclosed is information requested on behalf of a client who anticipates doing business within your state as outlined on the attached request.

Please review the facts presented and advise us as to how whether our client has nexus and as to what items should be taxed for sales and use tax purposes.

If you should have any questions related to this request, please contact me.

FACTS

TAXPAYER is a STATE domestic corporation that will begin selling electrical, illuminated signage to customers in your state from its location in CITY/STATE. The signs will be shipped into your state and then mounted on steel support structures for ground mountings or directly on to buildings. Typically, the signs will be bolted to the building or the steel support structure. The steel support structures are typically bolted to a concrete pad. If not bolted to a concrete pad, the steel will be set into the foundation and concrete poured around it.

TAXPAYER will ship some signs into your state via a contract hauler based in STATE. In most cases, the sign will be on a trailer owned by the TAXPAYER pulled by the contract hauler's diesel truck. Other signs will be shipped prepaid or collect via common carrier.

TAXPAYER will contract to install the signs for some customers. All sign installation will be subcontracted to a separate sign installation company. The TAXPAYER will not install the signs nor will it send any employees into your state to supervise the installation.

TAXPAYER, through its installer, may acquire installation permits when required by local codes. Permits will be billed to the customer.

TAXPAYER will bill the sign, installation, permits and freight as separate line items on one invoice. The installation, permit charges and freight charges will be billed at a selling price that is higher than the cost of the services or fees.

Other than the trailers delivering the signs, the TAXPAYER expects to have no personal or real property located within your state. TAXPAYER will have no employees in your state. TAXPAYER may occasionally send a sales representative to visit a customer or attend a trade show for stays of two days or less.

Questions:

1. If the sign is shipped into your state with no installation, should sales tax be charged against the selling price of the sign?
2. If the sign is shipped into your state with installation subcontracted to another entity, should sales tax be charged on the selling price of the sign and installation charges?
3. Should sales tax be charged on freight charges?
4. Should sales tax be charged on the permit charges?
5. If the taxpayer is presented with a certificate of exemption from a governmental unit or a charity, are all charges exempt from any type of sales or use tax? If not, what, type of charges to such entities are subject to tax?
6. If the taxpayer's customer arranges to lease the sign through a leasing company, should the taxpayer reissue the invoice in the name of the leasing company? Is the taxpayer allowed to accept a certificate of resale from the leasing company and treat the sale as exempt from tax?

DEPARTMENT'S RESPONSE

We note that the primary issue about which you have made inquiry is whether your client's proposed activities will cause it to have nexus in Illinois. We are unable to comply with your request to issue a determination on the issue of whether your client would have nexus for Retailers' Occupation/Use Tax purposes in Illinois. The Department has found that determinations of nexus in this area are so highly fact-dependent that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information.

We are, however, providing the following general information for your consideration. Out-of-state retailers are considered to fall within the definition of a "retailer maintaining a place of business in Illinois" (defined in the enclosed copy of 86 Ill. Adm. Code 150.201) when they perform any of the types of activities listed in 86 Ill. Adm. Code 150.201(i). The provisions of this regulation are subject to the U.S. Supreme Court ruling of Quill v. North Dakota, 112 S. Ct. 1902 (1992), in which the supreme court set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. Quill invoked a two-prong analysis consisting of 1) whether the

Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

The due process test will be met if requiring the retailer to collect state sales tax is fundamentally fair to the retailer. If the retailer intentionally avails itself of the benefits of the taxing state's economic market, then due process is satisfied, Quill at 1910.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not require an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, even if temporary, will trigger Use Tax collection responsibilities. An out-of-State vendor's delivery of its product to Illinois customers on a repetitive basis will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 310 (1996).

If it is determined that your client has nexus in Illinois, please be advised that a seller of signs may have different types of tax liability depending upon the circumstances of the sale. Please refer to 86 Ill. Adm. Code 130.2155, enclosed.

You have also asked about the taxation of charges for permits, freight, installation and sales to exempt organizations and lessors. Please be advised that all costs of doing business are generally part of the gross receipts subject to tax under Illinois law. See 86 Ill. Adm. Code 130.410. Although freight charges are generally taxable when part of the selling price of tangible personal property, Department rules provide that they can be deducted from taxable gross receipts when they are subject to a separate agreement and are reflective of the actual costs of transportation. See 86 Ill. Adm. Code 130.415. The taxation of installation charges is outlined in Section 130.450. Sales to an exempt governmental body or exclusively charitable organization must be documented by the purchaser providing an active exemption identification number. See 86 Ill. Adm. Code 130.2007. Under Illinois tax law, a lessor is the user of tangible personal property under true leases and incurs Use Tax liability up-front. Businesses registered to collect Illinois taxes should collect the Use Tax on sales of tangible personal property sold to lessors for the purpose of leasing under true leases. See 86 Ill. Adm. Code 130.2010.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk

Enc.